



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1207

Cases No. 1293: DI FILIPPO (1)
No. 1294: DI FILIPPO (2)

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS.

Composed of Mr. Julio Barboza, President; Mr. Spyridon Flogaitis; Mr. Dayendra Sena Wijewardane;

Whereas, on 14 April 2003, Pasquale Di Filippo, a former staff member of the United Nations Development Programme (hereinafter referred to as UNDP), filed an Application in the "first case" containing pleas which read as follows:

"II. Pleas

8. On the merits, the Applicant respectfully requests the [Tribunal] to find that:

8.1 The Respondent removed the Applicant from office for reasons extraneous to merit, competence, and professional appraisal;

8.2 The Respondent did not release the salary of the Applicant in violation of all relevant [United Nations] Staff Rules and Regulations

9. Whereafter the Applicant most respectfully requests the [Tribunal] to order the Respondent:

Obligations

- 9.1 The ... production of [documents] ...;
- 9.2 The withdrawal of all unfounded ... charges ...;
- 9.3 The rescinding of the administrative decision notified in writing to the Applicant on [13 January 2000] ...;
- 9.4 *Retroactive and Withheld Pay*
The release of the full salary of the Applicant, with retroactive effect for a third year [with interest] ...;
- 9.5 *Monetary Compensation*
The payment of ... monetary compensation ...;
- 9.6 *Alternative Monetary Compensation(s)*
...
9.6.1 The payment of a lumpsum of US\$ 100,000.00 ...
9.6.2 The payment of ... monetary compensation equalling a thirty (30)-month net base salary of the Applicant ...
- 9.7 *Referrals*
...
[Referral of named staff members to the Joint Disciplinary Committee]"

Whereas, on 15 April 2003, the Applicant filed an Application in the "second case" containing pleas which read as follows:

-II. Pleas

8. On the merits, the Applicant respectfully requests the [Tribunal] to find that:

The Respondent paid the Applicant a Relocation grant - Replacement of shipment entitlement applicable to Junior Professional Officers (... JPO) i.e. with a lumpsum payment of US\$ 7,200 vs. a requested, expected and legitimate Relocation grant - Replacement of shipment entitlement (... Relocation grant) with a lumpsum payment of US\$ 12,000 applicable to single staff.

9. ... [The Tribunal is] respectfully requested to order the Respondent:

Obligation

- 9.1 [The production of documents;]

Withheld Entitlements

- 9.2 The payment of the balance of the Relocation grant in the amount of US\$ 4,800.00 ... [with] interest ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer in the "first case" until 30 September 2003 and twice thereafter until 15 December;

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer in the "second case" until 30 September 2003 and periodically thereafter until 26 December;

Whereas the Respondent filed his Answer in the "first case" on 5 December 2003;

Whereas the Respondent filed his Answer in the "second case" on 15 December 2003;

Whereas the Applicant filed Written Observations in the "first case" on 29 December 2003;

Whereas the Applicant filed Written Observations in the "second case" on 17 January 2004;

Whereas the Applicant submitted additional communications in the "first case" on 5 June and 8 October 2004;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) in the "first case" reads, in part, as follows:

"Employment History

... The [Applicant] joined [the United Nations Office for Project Services (UNOPS)] as a ... JPO, for an initial one-year contract effective 5 November 1997 and subsequently renewed for an additional year, from 5 November 1998 to 4 November 1999. The [Applicant] received a final extension of his contract ... to 4 February 2000.

Summary of the facts

... On 17 July 1999, ... the [Applicant's] supervisor, ... through an e-mail made a request to [the] Chief, Division for Africa, UNOPS, for a third year contract for the [Applicant] under the Italian JPO programme.

... On 10 August 1999, ... [the Chief, Division for Africa, responded] ... that due to space constraint she had some reservations concerning such an extension.

... On 13 January 2000, ... UNOPS addressed a letter to [the Applicant] confirming that his fixed-term appointment [had] been extended for a period of 3 months, i.e. 5 November 1999 through 4 February 2000. ...

... On 10 March 2000, [the Regional Coordinator, Global Environment Facility, Europe & the CIS, UNDP,] wrote to [the] ... Permanent Mission of Italy to the United Nations, requesting the Government of Italy to consider an extension of [the Applicant's] assignment under the [JPO] Programme. ...

... On 25 April 2000, ... the Permanent Mission of Italy to the United Nations responded ... that the Italian authority [had] agreed, on an exceptional basis, to extend [the Applicant's] contract for a third year with ... UNDP.

... On 1 June 2000, ... UNDP ... informed [the Permanent Mission of Italy] as follows:

'Currently, UNDP Headquarters is undergoing a downsizing exercise, as part of its budget strategy and towards achieving a leaner headquarters. As part of this exercise, the Regional Bureau for Europe and CIS (RBEC), which had initially requested [the Applicant's] services, was required to undertake a functional analysis of its staffing requirements. The functional analysis has shown that the services of a JPO with [the Applicant's] competencies are not needed in RBEC at this time. Given the general circumstances surrounding the restructuring of headquarters, I am afraid that we are not able to take advantage of [the Applicant's] service at this time and are proceeding with his separation formalities effective as of 4 February 2000.'

[On 16 August 2000, the Applicant requested the Secretary-General to review the administrative decision contained in the letter dated 13 January from UNOPS.]

... On 30 August 2000, the [Applicant] was informed ... that his request for administrative review submitted to the Secretary-General was time-barred because it was introduced beyond the two-month time-limit requirement, starting on the date of notification of the decision in writing.

... On 5 September 2000, the [Applicant] replied ... as follows:

'... a review of two (2) distinct and separate administrative decisions was requested. Namely, i) the administrative decision conveyed to me on 13 January 2000, and ii) the failure by UNDP to renew my contract and release salary as per UNDP's own request and subsequent agreement by the Government of Italy. These administrative decisions were taken by UNOPS and UNDP respectively.'

The [Applicant] also indicated that UNDP's response did not address his request for review of the second administrative decision mentioned above. The [Applicant] finally requested the complete review of the two distinct and separate administrative decisions."

On 12 September 2000, the Applicant lodged an appeal in the "first case" with the JAB in New York.

The JAB adopted its report in the "first case" on 5 March 2003. Its considerations, conclusions and recommendation read, in part, as follows:

"Considerations

...

26. ... The Panel, given the exceptional circumstances of the case, decided in accordance with staff rule 111.2 (f) to waive the time limits for the filing of the request for review, thus deem the appeal receivable.

...

29. ... The Panel took note that according to UNDP'S JPO guidelines policies, the extension of a JPO for a third year was to be initiated at least six months before the expiration date of the current contract. As such, by mid 1999, the Appellant should have been informed of any intention or initiative on the part of the Administration to extend his contract for a third year. The Panel noted that the Appellant failed to provide such evidence, therefore, there was no basis for the Appellant to expect that his contract would be renewed for a third year. ...

...

31. ... Based on the information received, the Panel felt that it was difficult to establish the link between the removal of the Appellant ... and the subsequent recruitment of [another JPO whom the Applicant claimed was the reason for the non-renewal of his contract].

32. ... The Panel took note that according to the Respondent, in March 1999, when being transferred to the Africa Division, the Appellant was informed that 'given the impending decentralization of the portfolio of the Division for Africa to the field ...there would be no continuing demand for his services beyond the expiration date of his JPO assignment'. The Respondent added that he had also informed the Appellant that due to lack of space, it would not be possible to accommodate him at the new office premises in March 1999 ... The Panel thus observed that the Administration properly informed the Appellant that his contract would not be renewed. In fact the Panel was of the view that the Administration acted in good faith when it granted the Appellant a three-month extension ...

33. The Panel took note that the Appellant's performance appraisal report (PAR) for 1999 was not favourable, but the PAR for 2000 had more positive comments on the Appellant's performance, demonstrating that it was not an issue. As a general comment, the Panel found unrealistic the Appellant's theory of conspiracy ...

Conclusions

34. In light of the foregoing, the Panel unanimously agreed that the Appellant failed to corroborate his allegations that the Administration had created an expectation for a third year contract under the JPO programme, and also that there was a conspiracy to remove him in order to recruit someone else for the exchange of favours.

35. The Panel *unanimously concluded* that the Appellant's allegations were not realistic.

Recommendation

36. The Panel thus *unanimously decided* to make no recommendation in support of this appeal."

On 14 April 2003, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB in the "first case", filed the above-referenced Application with the Tribunal.

On 29 July 2003, the Under-Secretary-General for Management informed the Applicant that the Secretary-General agreed with the JAB's conclusions in the "first case" and had decided to accept its unanimous recommendation and to take no further action on his appeal.

Whereas the additional facts pertaining to the "second case", as contained in the report of the JAB in the "second case", read as follows:

"... On 23 August 2001, the [Applicant] submitted to [the Office of Human Resources, UNDP, (OHR)], a request for payment of his relocation grant in the amount of US\$ 12,000, in lieu of his shipment entitlement in connection with his repatriation to Italy upon completion of service.

"... On 28 August 2001, [OHR] informed the [Applicant] that he was only entitled to a total lump sum of US\$ 7,200 in connection with his separation from service.

"... On 28 September 2001, the [Applicant] wrote an e-mail to [OHR] requesting ... review [of] the decision to grant him only US\$ 7,200, in lieu of US\$ 12,000, based on the fact that he was no longer a JPO, but rather a single staff member as his three-month extension had been charged to the UNOPS administrative budget.

"... On the same date, [OHR] responded to the [Applicant's] e-mail as follows:

"At the time of the expiration of your contract, UNOPS was organizing a training workshop in Africa and in order to give you the opportunity to participate, enabling you to accumulate further knowledge and experience, UNOPS offered you a temporary three-month contract from 5 November 1999 to 4 February 2000 to be charged to the UNOPS administrative budget. As a result of the extension of your appointment by three months, the JPO Unit agreed to defer your separation entitlements until the actual date of separation. Since your separation entitlements were governed by the agreement between UNDP and the Italian Government, we are unable to exceed these entitlements.

In view of the above, regretfully we are unable to agree to your request for the \$12,000 lump sum relocation grant."

On 1 October 2001, the Applicant lodged an appeal in the "second case" with the JAB in New York. The JAB adopted its report in the "second case" on 12 March 2003. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

14. The issue before the panel was to determine whether or not the Appellant's contractual status changed from JPO to regular fixed-term appointee, when he was granted a three-month extension charged to [the] UNOPS budget. If such was the case, did it entitle him to a relocation grant of US\$ 12,000 as opposed to US\$ 7,200, which he received and thereafter challenged.

...

16. The Panel thus examined the Appellant's letters of appointment. ... The Panel observed that in his first two letters of appointment, the Appellant was given a 200 series fixed-term appointment ... The Panel further observed that [the] Appellant's third letter of appointment issued for a three-month extension ... granted by UNOPS and charged to its administrative budget, offered the Appellant, again, a 200 series [fixed-term appointment], with the same terms and conditions of employment as the two previous. The Panel therefore failed to see any evidence that the Appellant's contractual status had changed as a result of the three-month extension.

17. Furthermore, the Panel assumed that in the event that a change had occurred in the Appellant's contractual status as a result of the extension, he would have been offered a short-term contract with New York as place of recruitment, making him ineligible for any relocation grant, under the applicable Staff Rules and Regulations.

Conclusions

18. In light of the foregoing, the Panel concluded that there was no evidence that the Appellant's legal status had changed as a result of a three-month extension.

19. The Panel unanimously agreed that the Appellant had no legal basis to claim a relocation grant in the amount of US\$ 12,000.

Recommendation

20. The Panel thus unanimously decided to make no recommendation in support of this appeal."

On 15 April 2003, the Applicant, having not received any decision from the Secretary-General regarding his appeal to the JAB in the "second case", filed the above-referenced Application with the Tribunal.

On 29 July 2003, the Under-Secretary-General for Management informed the Applicant that the Secretary-General agreed with the JAB's reasoning and conclusions in the "second case" and had decided to accept its unanimous recommendation and to take no further action on his appeal.

Whereas the Applicant's principal contentions in the "first case" are:

1. The Applicant had a legitimate expectancy that his JPO contract would be renewed for a third year.
2. The Applicant was the victim of a conspiracy to remove him from office and replace him with another JPO.

Whereas the Respondent's principal contentions in the "first case" are:

1. The Applicant was not given any expectancy of renewal of his contract.
2. The Applicant has not proved his allegations of a conspiracy to remove him from his post and to replace him with another employee.

Whereas the Applicant's principal contention in the "second case" is:

He was entitled to receive relocation grant at the single staff member rate of US\$ 12,000, rather than the JPO rate of US\$ 7,200.

Whereas the Respondent's principal contention in the "second case" is:

The change in the source of funding for the Applicant's contract did not bestow any particular rights to the Applicant and did not conflict with his status as a JPO.

The Tribunal, having deliberated from 29 October to 24 November 2004, now pronounces the following Judgement:

1. The Applicant has presented the Tribunal with two different cases: the "first case" concerns the non-renewal of his fixed-term contract; the "second case" concerns the relocation grant he received upon his separation from service. Whilst the Applications concern two different alleged wrongs arising from two different administrative decisions, the Tribunal has determined the cases to be sufficiently related to each other to be considered jointly. (See Judgement No. 1010, *Kanj* (2001).)

II. The Applicant joined UNOPS effective 5 November 1997 as a JPO with a one-year fixed-term contract under the 200 series of the Staff Rules. He was subsequently granted a one-year extension of his JPO contract, which expired on 4 November 1999. Thereafter, at his request, he received a contract for a period of three months, which ended on 4 February 2000. The Applicant was informed that his appointment had been extended for this final three-month period in a letter dated 13 January 2000. The same letter simultaneously informed him that UNDP would start his separation formalities.

As a JPO, the Applicant was funded by the Government of Italy. His final extension, however, was not under the auspices of the JPO scheme, but was a normal fixed-term contract paid by the Organization. It was made clear in that contract that it was granted under the same terms and conditions as his previous contracts.

III. In his "first case", the Applicant challenges the decision of the Administration not to further extend his JPO contract, despite the fact that the Government of Italy had agreed, on an exceptional basis, to pay for a third year. The Applicant's material contention is that he had a reasonable legal expectation that his JPO contract would indeed be extended for a third year.

The Tribunal notes first of all that, during his contractual period with the Organization, the Applicant received no indication whatsoever that his contract would be further renewed. During his second year as a JPO, or even during his final three-month contract, the Applicant received no letter or other express promise from the Administration that a third year of his JPO contract would be proposed. It is, apparently, normal practice that JPO staff members serve for periods up to two years. Correspondence exchanged between the Applicant's supervisor and the Chief, Division for Africa, in July and August 1999, i.e., prior to the expiration of the Applicant's JPO contract, makes it plain that the Organization did not want to examine the possibility of a further extension of his contract. In any event, that exchange of opinions was made between the competent authorities within the Organization and not with the Applicant, so even had the outcome been positive, he could not rely upon it in order to support a legal claim. Moreover, the Applicant was formally advised in January 2000 that his separation would take effect at the end of his current contract.

The Tribunal also takes note of an exchange of letters between the Organization and the Italian Government in March and April 2000 regarding whether Italy would be willing to fund a third year of the Applicant's JPO appointment. However, that exchange of letters, which again was completed at the bureaucratic level

and not with the Applicant (who, after all, had left office in February), ended with the decision of the Chief, Central Operations, Human Resources, UNDP, i.e., the official responsible for such decisions, who informed the Italian Government that the Organization no longer required the Applicant's services.

In Judgement No. 1057, *Da Silva* (2002), the Tribunal recalled its consistent jurisprudence

"that fixed-term contracts do not carry any right of renewal and that no notice of termination is necessary in such cases. Exceptions to this rule may be found in countervailing circumstances, such as an express promise or an abuse of discretion including bias, prejudice or other discrimination against the staff member, or any extraneous or improper motivation on the part of the Administration. (See Judgements No. 205, *El-Naggar* (1975); No. 614, *Hunde* (1993); and No. 885, *Handelsman* (1998).)"

In the instant case, the Tribunal finds no indication that the Administration created any legal expectancy for the Applicant. The Tribunal wishes to emphasize that discussions held between the Administration and a Member State regarding the funding of a JPO post, or even actual agreement from the State in question to fund the post, do not create a legal right or expectancy to anyone aspiring to be a JPO. Such contracts are very specific, and the Administration must remain free to decide whether or not it wishes to have JPOs, or to employ a specific person among its JPOs. Again, this exchange of correspondence, regardless of its legal importance, took place after the Applicant had left the service of the Organization.

IV. The Tribunal turns now to the "second case", i.e., the decision of the Administration to pay the Applicant relocation grant at the JPO rate, rather than the rate applicable to single staff members under other forms of fixed-term contract. The Tribunal is surprised to see that the Applicant now relies upon the argument that he was not a JPO, whilst in his "first case" seeking damages for the fact that his JPO contract was not extended.

In Judgment No. 1195, *Newton* (2004) it was stated:

"The Tribunal notes that employment within the United Nations is regulated by a series of regulations and rules, which have been drafted and are the result of long lasting policies; agreements with staff representatives; experience; and, the desire to create a well functioning environment. Unless it is shown that the Administration had the authority to, and indeed did, deviate from the

Staff Regulations and Rules to the benefit of the employee, exceptions of this kind are presumed to have been due to mistake."

In the present case, there is not even a need for such a presumption to be applied as there was no mistake at all: the Administration correctly paid the Applicant at the JPO rate. The Tribunal notes that the final extension of the Applicant's appointment did not alter, under the circumstances, the terms and conditions of his initial letter or contract of appointment. Accordingly, notwithstanding the fact that he was given the functional title of "Associate Programme Officer" in his final letter of appointment, the Applicant remained under the terms and conditions of his initial JPO appointment, as clearly stated in his contract, and he has no legally founded claim to be considered otherwise. Therefore, this claim must also fail.

V. In view of the foregoing, both Applications are rejected in their entirety.

(Signatures)

Julio Barboza
President

Spyridon Flogaitis
Member

Dayendra Sena Wijewardane
Member

New York, 24 November 2004

Maritza Struyvenberg
Executive Secretary